

AMENDED IN ASSEMBLY JULY 2, 1998

AMENDED IN ASSEMBLY JUNE 11, 1998

AMENDED IN SENATE APRIL 22, 1998

AMENDED IN SENATE APRIL 2, 1998

**SENATE BILL**

**No. 1734**

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**Introduced by Senator Johnston**

February 18, 1998

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An act to amend Sections 502.01, 13848, 13848.2, 13848.4, and 13848.6 of the Penal Code, relating to computer crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1734, as amended, Johnston. High-tech crimes.

(1) Existing law provides for the forfeiture of certain electronic equipment upon a judicial finding that this equipment was used in the commission of specified crimes.

This bill would clarify that these provisions also apply to "illegal telecommunications equipment" by correcting an erroneous cross-reference.

(2) Existing law states the intent of the Legislature to provide local law enforcement with the tools necessary to interdict high technology crimes. In this connection, existing law defines an enumerated list of offenses as high technology crimes. Funds from a specified program within the Office of Criminal Justice Planning are to be expended for the interdiction of these crimes.

This bill would recast these provisions by providing that the executive director may define additional high technology crimes, and by revising the enumerated list to include crimes involving the theft of access or trade secrets.

(3) Existing law authorizes the Executive Director of the Office of Criminal Justice Planning, in consultation with the High Technology Steering Committee, to allocate and award funds to counties with high technology theft crime units upon application by local district attorneys and sheriffs and upon approval by the board of supervisors of the county.

This bill would instead provide that the executive director shall award these funds to regional high technology theft crime programs. The bill would also allow chiefs of police to apply for this assistance, upon approval by the board of supervisors of the participating county.

(4) Existing law provides that, upon appropriation by the Legislature, 10% of the funds deposited into the High Technology Theft Apprehension and Prosecution Program Trust Fund shall be used for developing and maintaining a statewide data base on high technology crime for use in developing and distributing intelligence information to participating law enforcement agencies.

This bill would instead provide that up to 10% of moneys appropriated into this fund may be used for that purpose.

(5) Existing law establishes the High Technology Steering Committee, the membership of which is comprised of 4 industry representatives, and one representative of local law enforcement from each area in which a regional task force will be situated.

This bill would rename this committee as the High Technology Crime Advisory Committee, expand its membership to 15 individuals designated by specified law enforcement and industry associations, provide that the chair of the committee is to be designated by the Executive Director of the Office of Criminal Justice Planning, impose certain attendance and notice requirements, and provide for the creation of subcommittees. This bill would require the committee to prepare a comprehensive written strategy to accomplish specified goals, and to annually review the



effectiveness of the regional task forces and provide its findings in a report to the Legislature and the Governor.

(6) This bill would declare it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 502.01 of the Penal Code is  
2 amended to read:

3 502.01. (a) As used in this section:

4 (1) "Property subject to forfeiture" means any  
5 property of the defendant that is illegal  
6 telecommunications equipment as defined in subdivision  
7 (g) of Section 502.8, or a computer, computer system, or  
8 computer network, and any software or data residing  
9 thereon, if the telecommunications device, computer,  
10 computer system, or computer network was used in  
11 committing a violation of subdivision (c) of Section 502 or  
12 Section 502.7 or 502.8, or was used as a repository for the  
13 storage of software or data obtained in violation of those  
14 provisions. If the defendant is a minor, it also includes  
15 property of the parent or guardian of the defendant.

16 (2) "Sentencing court" means the court sentencing a  
17 person found guilty of violating subdivision (c) of Section  
18 502 or Section 502.7 or 502.8, or, in the case of a minor  
19 found to be a person described in Section 602 of the  
20 Welfare and Institutions Code because of a violation of  
21 those provisions, the juvenile court.

22 (3) "Interest" means any property interest in the  
23 property subject to forfeiture.

24 (4) "Security interest" means an interest that is a lien,  
25 mortgage, security interest, or interest under a  
26 conditional sales contract.

27 (5) "Value" has the following meanings:

28 (A) When counterfeit items of computer software are  
29 manufactured or possessed for sale, the "value" of those  
30 items shall be equivalent to the retail price or fair market  
31 price of the true items that are counterfeited.

1 (B) When counterfeited but unassembled  
2 components of computer software packages are  
3 recovered, including, but not limited to, counterfeited  
4 computer diskettes, instruction manuals, or licensing  
5 envelopes, the “value” of those components of computer  
6 software packages shall be equivalent to the retail price  
7 or fair market price of the number of completed  
8 computer software packages that could have been made  
9 from those components.

10 (b) The sentencing court shall, upon petition by the  
11 prosecuting attorney, at any time following sentencing,  
12 or by agreement of all parties, at the time of sentencing,  
13 conduct a hearing to determine whether any property or  
14 property interest is subject to forfeiture under this  
15 section. At the forfeiture hearing, the prosecuting  
16 attorney shall have the burden of establishing, by a  
17 preponderance of the evidence, that the property or  
18 property interests are subject to forfeiture. The  
19 prosecuting attorney may retain seized property that  
20 may be subject to forfeiture until the sentencing hearing.

21 (c) Prior to the commencement of a forfeiture  
22 proceeding, the law enforcement agency seizing the  
23 property subject to forfeiture shall make an investigation  
24 as to any person other than the defendant who may have  
25 an interest in it. At least 30 days before the hearing to  
26 determine whether the property should be forfeited, the  
27 prosecuting agency shall send notice of the hearing to any  
28 person who may have an interest in the property that  
29 arose before the seizure.

30 A person claiming an interest in the property shall file  
31 a motion for the redemption of that interest at least 10  
32 days before the hearing on forfeiture, and shall send a  
33 copy of the motion to the prosecuting agency and to the  
34 probation department.

35 If a motion to redeem an interest has been filed, the  
36 sentencing court shall hold a hearing to identify all  
37 persons who possess valid interests in the property. No  
38 person shall hold a valid interest in the property if, by a  
39 preponderance of the evidence, the prosecuting agency  
40 shows that the person knew or should have known that

1 the property was being used in violation of subdivision  
2 (c) of Section 502 or Section 502.7 or 502.8, and that the  
3 person did not take reasonable steps to prevent that use,  
4 or if the interest is a security interest, the person knew or  
5 should have known at the time that the security interest  
6 was created that the property would be used for a  
7 violation.

8 (d) If the sentencing court finds that a person holds a  
9 valid interest in the property, the following provisions  
10 shall apply:

11 (1) The court shall determine the value of the  
12 property.

13 (2) The court shall determine the value of each valid  
14 interest in the property.

15 (3) If the value of the property is greater than the  
16 value of the interest, the holder of the interest shall be  
17 entitled to ownership of the property upon paying the  
18 court the difference between the value of the property  
19 and the value of the valid interest.

20 If the holder of the interest declines to pay the amount  
21 determined under paragraph (2), the court may order  
22 the property sold and designate the prosecutor or any  
23 other agency to sell the property. The designated agency  
24 shall be entitled to seize the property and the holder of  
25 the interest shall forward any documentation underlying  
26 the interest, including any ownership certificates for that  
27 property, to the designated agency. The designated  
28 agency shall sell the property and pay the owner of the  
29 interest the proceeds, up to the value of that interest.

30 (4) If the value of the property is less than the value of  
31 the interest, the designated agency shall sell the property  
32 and pay the owner of the interest the proceeds, up to the  
33 value of that interest.

34 (e) If the defendant was a minor at the time of the  
35 offense, this subdivision shall apply to property subject to  
36 forfeiture that is the property of the parent or guardian  
37 of the minor.

38 (1) The prosecuting agency shall notify the parent or  
39 guardian of the forfeiture hearing at least 30 days before  
40 the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of subdivision (c) of Section 502 or Section 502.7 or 502.8 within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(f) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(g) If the property is to be sold, the court may designate the prosecuting agency or any other agency to

1 sell the property at auction. The proceeds of the sale shall  
2 be distributed by the court as follows:

3 (1) To the bona fide or innocent purchaser or  
4 encumbrancer, conditional sales vendor, or mortgagee of  
5 the property up to the amount of his or her interest in the  
6 property, if the court orders a distribution to that person.

7 (2) The balance, if any, to be retained by the court,  
8 subject to the provisions for distribution under  
9 subdivision (f).

10 SEC. 2. Section 13848 of the Penal Code is amended  
11 to read:

12 13848. (a) It is the intent of the Legislature in  
13 enacting this chapter to provide local law enforcement  
14 and district attorneys with the tools necessary to  
15 successfully interdict the promulgation of high  
16 technology crime. According to the federal Law  
17 Enforcement Training Center, it is expected that states  
18 will see a tremendous growth in high technology crimes  
19 over the next few years as computers become more  
20 available and computer users more skilled in utilizing  
21 technology to commit these faceless crimes. High  
22 technology crimes are those crimes in which high  
23 ~~technology, as defined by the Executive Director of the~~  
24 ~~Office of Criminal Justice Planning, is used as an~~  
25 *technology is used as an* instrument in committing, or  
26 assisting in the commission of, a crime, or which is the  
27 target of a criminal act.

28 (b) Funds provided under this program are intended  
29 to ensure that law enforcement is equipped with the  
30 necessary personnel and equipment to successfully  
31 combat high technology crime which includes, but is not  
32 limited to, the following offenses:

33 (1) White-collar crime, such as check, automated  
34 teller machine, and credit card fraud, committed by  
35 means of electronic or computer-related media.

36 (2) Unlawful access, destruction of or unauthorized  
37 entry into and use of private, corporate, or government  
38 computers and networks, including wireless and wireline  
39 communications networks and law enforcement dispatch  
40 systems, and the theft, interception, manipulation,

1 destruction, or unauthorized disclosure of data stored  
2 within those computers and networks.

3 (3) Money laundering accomplished with the aid of  
4 computer networks or electronic banking transfers.

5 (4) Theft and resale of telephone calling codes, theft  
6 of telecommunications service, theft of wireless  
7 communication service, and theft of cable television  
8 services by manipulation of the equipment used to  
9 receive those services.

10 (5) Software piracy and other unlawful duplication of  
11 information.

12 (6) Theft and resale of computer components and  
13 other high technology products produced by the high  
14 technology industry.

15 (7) Remarketing and counterfeiting of computer  
16 hardware and software.

17 (8) Theft of trade secrets.

18 (c) This program is also intended to provide support  
19 to law enforcement agencies by providing technical  
20 assistance to those agencies with respect to the seizure  
21 and analysis of computer systems used to commit high  
22 technology crimes or store evidence relating to those  
23 crimes.

24 SEC. 3. Section 13848.2 of the Penal Code is amended  
25 to read:

26 13848.2. (a) There is hereby established in the Office  
27 of Criminal Justice Planning a program of financial and  
28 technical assistance for law enforcement and district  
29 attorneys' offices, designated the High Technology Theft  
30 Apprehension and Prosecution Program. All funds  
31 appropriated to the Office of Criminal Justice Planning  
32 for the purposes of this chapter shall be administered and  
33 disbursed by the executive director of the office in  
34 consultation with the High Technology Crime Advisory  
35 Committee as established in Section 13848.6 and shall to  
36 the extent feasible be coordinated with federal funds and  
37 private grants or private donations that are made  
38 available for these purposes.

39 (b) The Executive Director of the Office of Criminal  
40 Justice Planning is authorized to allocate and award funds



1 to regional high technology crime programs which are  
2 established in compliance with Section 13848.4.

3 (c) The allocation and award of funds under this  
4 chapter shall be made on application executed by the  
5 district attorney, county sheriff, or chief of police and  
6 approved by the board of supervisors for each county that  
7 is a participant of a high technology theft apprehension  
8 and prosecution unit.

9 (d) In identifying program areas that will be eligible  
10 for competitive application during the 1998–99 fiscal year  
11 for federal funding pursuant to the Edward Byrne  
12 Memorial State and Local Law Enforcement Assistance  
13 Programs (Subchapter V (commencing with Section  
14 3750) of Chapter 46 of the United States Code), the Office  
15 of Criminal Justice Planning shall include, to the extent  
16 possible, an emphasis on high technology crime by  
17 selecting funding areas that would further the use of  
18 federal funds to address high technology crime and  
19 facilitate the establishment of high technology  
20 multijurisdictional task forces.

21 (e) The Office of Criminal Justice Planning shall  
22 allocate any increase in federal funding pursuant to the  
23 Anti-Drug Abuse Act (Public Law 100-690) for the  
24 1998–99 fiscal year to those programs described in  
25 subdivision (d).

26 SEC. 4. Section 13848.4 of the Penal Code is amended  
27 to read:

28 13848.4. (a) All funds appropriated to the Office of  
29 Criminal Justice Planning for the purposes of this chapter  
30 shall be deposited in the High Technology Theft  
31 Apprehension and Prosecution Program Trust Fund,  
32 which is hereby established. The fund shall be under the  
33 direction and control of the executive director. Moneys  
34 in the fund, upon appropriation by the Legislature, shall  
35 be expended to implement this chapter.

36 (b) Moneys in the High Technology Theft  
37 Apprehension and Prosecution Program Trust Fund shall  
38 be expended to fund programs to enhance the capacity  
39 of local law enforcement and prosecutors to deter,  
40 investigate, and prosecute high technology-related

1 crimes. After deduction of the actual and necessary  
2 administrative costs referred to in subdivision (f), the  
3 High Technology Theft Apprehension and Prosecution  
4 Program Trust Fund shall be expended to fund programs  
5 to enhance the capacity of local law enforcement, state  
6 police, and local prosecutors to deter, investigate, and  
7 prosecute high technology-related crimes. Any funds  
8 distributed under this chapter shall be expended for the  
9 exclusive purpose of deterring, investigating, and  
10 prosecuting high technology-related crimes.

11 (c) Up to 10 percent of the funds shall be used for  
12 developing and maintaining a statewide data base on high  
13 technology crime for use in developing and distributing  
14 intelligence information to participating law  
15 enforcement agencies. Any funds not expended in a fiscal  
16 year for these purposes shall be distributed to regional  
17 high technology theft task forces pursuant to subdivision  
18 (b).

19 (d) Any regional task force receiving funds under this  
20 section may elect to have the Department of Justice  
21 administer the regional task force program. The  
22 department may be reimbursed for any expenditures  
23 incurred for administering a regional task force from  
24 funds given to local law enforcement pursuant to  
25 subdivision (b).

26 (e) The Office of Criminal Justice Planning shall  
27 distribute funds in the High Technology Theft  
28 Apprehension and Prosecution Program Trust Fund to  
29 eligible agencies pursuant to subdivision (b) in  
30 consultation with the High Technology Crime Advisory  
31 Committee established pursuant to Section 13848.6.

32 (f) Administration of the overall program and the  
33 evaluation and monitoring of all grants made pursuant to  
34 this chapter shall be performed by the Office of Criminal  
35 Justice Planning, provided that funds expended for these  
36 functions shall not exceed 5 percent of the total amount  
37 made available under this chapter.

38 SEC. 5. Section 13848.6 of the Penal Code is amended  
39 to read:



1 13848.6. (a) The High Technology Crime Advisory  
2 Committee is hereby established for the purpose of  
3 formulating a comprehensive written strategy for  
4 addressing high technology crime throughout the state  
5 and to advise the Office of Criminal Justice Planning on  
6 the appropriate disbursement of funds to regional task  
7 forces.

8 (b) This strategy shall be designed to be implemented  
9 through regional task forces. In formulating that strategy,  
10 the committee shall identify various priorities for law  
11 enforcement attention, including the following goals:

12 (1) To apprehend and prosecute criminal  
13 organizations, networks, and groups of individuals  
14 engaged in the following activities:

15 (A) Theft of computer components and other high  
16 technology products.

17 (B) Violations of Penal Code Sections 211, 350, 351a,  
18 459, 496, 537e, 593d, and 593e.

19 (C) Theft of telecommunications services and other  
20 violations of Penal Code Sections 502.7 and 502.8.

21 (D) Counterfeiting of negotiable instruments and  
22 other valuable items through the use of computer  
23 technology.

24 (E) Creation and distribution of counterfeit software  
25 and other digital information, including the use of  
26 counterfeit trademarks to misrepresent the origin of that  
27 software or digital information.

28 (2) To apprehend and prosecute individuals and  
29 groups engaged in the unlawful access, destruction, or  
30 unauthorized entry into and use of private, corporate, or  
31 government computers and networks, including wireless  
32 and wireline communications networks and law  
33 enforcement dispatch systems, and the theft,  
34 interception, manipulation, destruction, and  
35 unauthorized disclosure of data stored within those  
36 computers.

37 (3) To apprehend and prosecute individuals and  
38 groups engaged in the theft of trade secrets.

39 (4) To investigate and prosecute high technology  
40 crime cases requiring coordination and cooperation

1 between regional task forces and local, state, federal, and  
2 international law enforcement agencies.

3 (c) The Executive Director of the Office of Criminal  
4 Justice Planning shall appoint the following members to  
5 the committee:

6 (1) A designee of the California District Attorneys  
7 Association.

8 (2) A designee of the California State Sheriffs  
9 Association.

10 (3) A designee of the California Police Chiefs  
11 Association.

12 (4) A designee of the Attorney General.

13 (5) A designee of the California Highway Patrol.

14 (6) A designee of the High Tech Criminal  
15 Investigators Association.

16 (7) A designee of the Office of Criminal Justice  
17 Planning.

18 (8) A designee of the American Electronic Association  
19 to represent California computer system manufacturers.

20 (9) A designee of the American Electronic Association  
21 to represent California computer software producers.

22 (10) A designee of the California Cellular Carriers  
23 Association.

24 (11) A designee of the California Internet Industry  
25 Alliance.

26 (12) A designee of the Semiconductor Equipment and  
27 Materials International.

28 (13) A designee of the California Cable Television  
29 Association.

30 (14) A designee of the Motion Picture Association of  
31 America.

32 (15) A designee of either the California Telephone  
33 Association or the California Association of Long Distance  
34 Companies. This position shall rotate every other year  
35 between designees of the two associations.

36 (d) The Executive Director of the Office of Criminal  
37 Justice Planning shall designate the Chair of the High  
38 Technology Crime Advisory Committee from the  
39 appointed members.



(e) The advisory committee shall not be required to meet more than 12 times per year. The advisory committee may create subcommittees of its own membership, and each subcommittee shall meet as often as the subcommittee members find necessary. It is the intent of the Legislature that all advisory committee members shall actively participate in all advisory committee deliberations required by this chapter.

Any member who, without advance notice to the executive director and without designating an alternative representative, misses three scheduled meetings in any calendar year for any reason other than severe temporary illness or injury (as determined by the Executive Director of the Office of Criminal Justice Planning) shall automatically be removed from the advisory committee. If a member wishes to send an alternative representative in his or her place, advance written notification of this substitution shall be presented to the executive director. This notification shall be required for each meeting the appointed member elects not to attend.

Members of the advisory committee shall receive no compensation for their services, but shall be reimbursed for travel and per diem expenses incurred as a result of attending meetings sponsored by the Office of Criminal Justice Planning under this chapter.

(f) The executive director, in consultation with the High Technology Crime Advisory Committee, shall develop specific guidelines and administrative procedures for the selection of projects to be funded by the High Technology Theft Apprehension and Prosecution Program, which guidelines shall include the following selection criteria:

(1) Each regional task force that seeks funds shall submit a written application to the committee setting forth in detail the proposed use of the funds.

(2) In order to qualify for the receipt of funds, each proposed regional task force submitting an application shall provide written evidence that the agency meets either of the following conditions:

1 (A) The regional task force devoted to the  
2 investigation and prosecution of high technology-related  
3 crimes is comprised of local law enforcement and  
4 prosecutors, and has been in existence for at least one year  
5 prior to the application date.

6 (B) At least one member of the task force has at least  
7 three years of experience in investigating or prosecuting  
8 cases of suspected high technology crime.

9 (3) In order to qualify for funds, a regional task force  
10 shall be comprised of local law enforcement and  
11 prosecutors from at least two counties. At the time of  
12 funding, the proposed task force shall also have at least  
13 one investigator assigned to it from a state law  
14 enforcement agency. Each task force shall be directed by  
15 a local steering committee composed of representatives  
16 of participating agencies and members of the local high  
17 technology industry.

18 (4) Additional criteria that shall be considered by the  
19 advisory committee in awarding grant funds shall  
20 include, but not be limited to, the following:

21 (A) The number of high technology crime cases filed  
22 in the prior year.

23 (B) The number of high technology crime cases  
24 investigated in the prior year.

25 (C) The number of victims involved in the cases filed.

26 (D) The total aggregate monetary loss suffered by the  
27 victims, including individuals, associations, institutions, or  
28 corporations, as a result of the high technology crime  
29 cases filed, and those under active investigation by that  
30 task force.

31 (5) Each regional task force that has been awarded  
32 funds authorized under the High Technology Theft  
33 Apprehension and Prosecution Program during the  
34 previous grant-funding cycle, upon reapplication for  
35 funds to the committee in each successive year, shall be  
36 required to submit a detailed accounting of funds  
37 received and expended in the prior year in addition to  
38 any information required by this section. The accounting  
39 shall include all of the following information:

40 (A) The amount of funds received and expended.

1 (B) The use to which those funds were put, including  
2 payment of salaries and expenses, purchase of equipment  
3 and supplies, and other expenditures by type.

4 (C) The number of filed complaints, investigations,  
5 arrests, and convictions that resulted from the  
6 expenditure of the funds.

7 (g) The committee shall annually review the  
8 effectiveness of the regional task forces created in  
9 deterring, investigating, and prosecuting high  
10 technology crimes and provide its findings in a report to  
11 the Legislature and the Governor. This report shall be  
12 based on information provided by the regional task forces  
13 in an annual report to the committee which shall detail  
14 the following:

15 (1) Facts based upon, but not limited to, the following:

16 (A) The number of high technology crime cases filed  
17 in the prior year.

18 (B) The number of high technology crime cases  
19 investigated in the prior year.

20 (C) The number of victims involved in the cases filed.

21 (D) The number of convictions obtained in the prior  
22 year.

23 (E) The total aggregate monetary loss suffered by the  
24 victims, including individuals, associations, institutions,  
25 corporations, and other relevant public entities,  
26 according to the number of cases filed, investigations,  
27 prosecutions, and convictions obtained.

28 (2) An accounting of funds received and expended in  
29 the prior year, which shall include all of the following:

30 (A) The amount of funds received and expended.

31 (B) The uses to which those funds were put, including  
32 payment of salaries and expenses, purchase of supplies,  
33 and other expenditures of funds.

34 (C) Any other relevant information requested.

35 SEC. 6. This act is an urgency statute necessary for the  
36 immediate preservation of the public peace, health, or  
37 safety within the meaning of Article IV of the  
38 Constitution and shall go into immediate effect. The facts  
39 constituting the necessity are:

1 In order to revise provisions relating to the High  
2 Technology Crime Advisory Committee and the funding  
3 of regional law enforcement high-tech task forces, so as to  
4 assist in the prevention, investigation, and prosecution of  
5 high technology crimes at the earliest possible time, it is  
6 necessary that this act take effect immediately.

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